

## **JUSTIFICATION AND APPROVAL (J&A) FOR OTHER THAN FULL AND OPEN COMPETITION**

Pursuant to the requirements of the Competition in Contract Act (CICA) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.3 and in accordance with the requirements of FAR 6.303-1, the justification for the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR 6.303-2 as follows:

### **1. Agency and Contracting Activity.**

The U.S. Customs & Border Protection (CBP), Office of Acquisition (OA) in support of the Office of Human Resources (HRM), proposes to increase the ceiling on a basis other than full and open competition.

### **2. Nature and/or description of the Action being approved.**

This action will result in a modification to increase the CBP Employee Assistance Program (EAP) Indefinite Delivery Indefinite Quantity (IDIQ) contract ceiling for award of a task order under option year 4. The increase is required due to a number of unanticipated events to which CBP was required to respond for the health and safety of its workforce.

The total contract ceiling must be increased to allow for uninterrupted EAP services for CBP employees and their families while HRM prepares and conducts a new EAP contract competition. Employee Assistance Program services are essential to the overall well-being of CBP's workforce and support mission critical functions and services. It is in the best interest of CBP to increase the ceiling and maintain uninterrupted services while the new contract is competed.

This increased demand for EAP Services has pushed the amount of contract obligations to current ceiling. As a result of this increase in EAP use, the ceiling on the contract will be increased by an additional \$2,108,223.00, extending the ceiling from \$7,496,116.00 to \$9,604,339.00, to accommodate anticipated support through the term of the contract.

Name and address of the contractor: EAP Consultants, Inc. (DBA- Espyr)  
1850 Pkwy Place, Suite 700  
Marietta, GA 30067-8260

(a) Contract type: Hybrid- Labor Hour/ Firm Fixed Price

(b) Estimated total value (including options):

The IDIQ ceiling will be increased FROM: \$7,496,116.00; BY: \$2,108,223.00; TO: \$9,604,339.00.

- (c) Type of funding: Operation and Support funds, 19500
- (d) Year of funding Fiscal Year 2019.
- (e) Solicitation number: n/a
- (f) Background information about the requirement. The EAP IDIQ was competed under RFP HSBP1015Q0005. Due to unforeseeable usage increases, the ceiling is required to be increased for a task order to be issued under option year 4.

### **3. Description of Supplies/Services.**

This action will result in a modification to increase the CBP Employee Assistance Program (EAP) Indefinite Delivery Indefinite Quantity (IDIQ) contract ceiling for award of a task order under option year 4. CBP's EAP was established in accordance with public laws PL 79-658, which authorizes the establishment of health programs to promote and maintain the physical and mental fitness of federal employees; PL 91-616 and 92-255, which require federal agencies to make available alcoholism and drug abuse programs to federal employees; and Public Laws 96-180 and 96-181, which authorize agencies to provide counseling services to federal employees and, to the extent possible, to family members of employees who have substance abuse problems. Increasing the ceiling will allow for these critical services to continue for employees and their family members through option year 4 of the contract.

### **4. Identification of Statutory Authority Permitting Other Than Full and Open Competition.**

The statutory authority permitting other than full and open competition is 41 U.S.C. 3304(a)(1), implemented by the FAR Subpart 6.302-1(a)(1) entitled, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements".

### **5. Demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.**

The required increase to the IDIQ ceiling is due to a number of unanticipated events to which CBP was required to respond to for the health and safety of its workforce. CBP employee use of the Employee Assistance Program has increased in response to multiple, devastating hurricanes and other natural disasters, which were

not foreseeable at time of contract award. Work Life services, including a Suicide Prevention Tool, increased the need for support during and after the 2018-2019 partial federal government shutdown and training sessions were required for management to assist employees with these situations. EAP use also increased in response to unanticipated critical incidents and other emerging crises, such as the unexpected response required for migrant caravans, employee suicides, and the need for a financial wellness program after the extended partial federal government shutdown. The unanticipated and unprecedented situation at the southern border over the past 12 months resulted in a significant increase in EAP activity and it is expected to continue while the migrant crisis is ongoing. The evolving needs of CBP's growing workforce requires an increase in employee support and services that are offered through the EAP.

The authority under FAR Subpart 6.302-1 entitled, "Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements" is the appropriate course of action because no other vendor is capable of stepping in immediately to take over these mission critical services without a break in service. The transition time needs to be thoughtfully, securely, and completely executed over a matter of months. The contractor's key personnel must be fully cleared and their IT system must go through the DHS IT security review procedures to be in compliance with DHS IT security regulations. The employee information within the Contractor's record, case management, and Management Information systems would all need to be transitioned to a new, secure system, which has gone through the DHS IT Security review process. This process includes a full review to ensure favorable security measures are in place for processing, storing, and inputting federal employees' data and PII. Additionally, the mental health care and substance abuse counseling providers who have built treatment relationships with CBP employees cannot be immediately replaced without causing potential damage to the CBP employee's treatment plans. An extended break in EAP support services would have a potentially devastating impact on CBP employees, particularly those tasked with supporting the humanitarian crisis at the border. Upon the ultimate completion of the IDIQ, the EAP contractor must carefully coordinate the transition of contact information for the EAP helpline, crisis services, financial planning, and mental health professionals for all CBP employees utilizing these services. The ceiling increase under the current IDIQ is in the best interest of the Government. It will allow for a final task order to be issued under the last option year of this contract so that CBP may complete a seamless and successful transition to a new IDIQ contract with the increased capacity to meet the demands of its expanding workforce.

EAP Consultants is the only contractor who is capable of providing these EAP services without interruption. If these EAP services are disrupted or stopped, the damage to CBP employees is potentially catastrophic, as mental health and suicide prevention are critical components of this contract and the stress and danger experienced by a large number of CBP employees is very high.

**6. Description of Efforts Made to Ensure that Offers are Solicited from as Many Potential Sources as is Practicable.**

The CO will post the ceiling increase J&A on FedBizOpps, on or before May 21, 2019.

**7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable.**

The Contracting Officer determines that the anticipated price(s) will be fair and reasonable based on the responses to the initial competition and subsequent award of IDIQ HSBP1015D00004. Competitive pricing was reviewed in response to the original requirement and determined by the Government to be fair and reasonable. The pricing utilized for the IDIQ ceiling increase is the same pricing and rates which were previously determined to be fair and reasonable.

**8. Description of Market Research.**

Market Research was conducted prior to the competition for the original award of the IDIQ contract. Market research was not before the ceiling increase because the rates for this IDIQ were already determined to be fair and reasonable upon award. There was no rate increase for option year 4 and the contractor has been performing satisfactorily. There can be no break in these mission critical services; therefore, Espyr is the only vendor who is capable of providing uninterrupted services while CBP prepares for a new competition. The program office will conduct market research for the next requirement to ensure maximum competition.

**9. Any Other Facts Supporting the Use of Other Than Full and Open Competition.**

Due to the evolving need for robust and increased levels of EAP services, CBP HRM requires time to conduct thorough market research and develop an Independent Government Cost Estimate (IGCE) which will adequately cover the growing need for EAP services as the agency increases hiring to meet established presidential mandates and the employees performing the mission require greater support.

A break in EAP services would be devastating for CBP employees that depend on these services as they perform the required functions while meeting CBP's mission.

The requirement will not be modified to enhance competition under the existing IDIQ; however, HRM will work to identify where the greatest opportunities for competition may be for the future contract.

This is not a follow-on contract. CBP is issuing a task order against a previously competed IDIQ contract under option year 4.

**10. A Listing of the Sources, if Any That Expressed, in Writing, an Interest in the Acquisition.**

N/A- no sources expressed, in writing, an interest in this acquisition.

**11. A Statement of the Action, if Any, the Agency May Take to Remove or Overcome Any Barriers to Competition Before Any Subsequent Acquisition for Supplies or Services Required.**

CBP will prepare the new competition to allow for the maximum competition possible. The future SOW will not include overly restrictive requirements and vendors will be permitted to propose innovative ways to meet the demands of CBP employees stationed in both CONUS and OCONUS locations.

The next IDIQ contract is estimated to be awarded prior to the March 31, 2020 end date of the fourth option year task order so that there will be no break in services. CBP intends to issue a competitive solicitation in August 2019 with a planned award in January 2020 which will allow for an effective transition to a new contract,

**12. Planning and Funding Statement.**

This acquisition does not result from a lack of planning or the expiration of funds.

**13. Contracting Officer's Certification.** I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Contracting Officer

\_\_\_\_05/16/2019\_\_\_\_\_  
Date

**14. Technical / Requirements Personnel Certification.** I certify this requirement meets the Government's minimum need and that the supporting data, which forms a basis for this justification, is complete and accurate.

\_\_\_\_\_  
Technical Representative

\_\_\_\_5/20/2019\_\_\_\_\_  
Date

**15. Legal Counsel Review.** I reviewed this Justification and Approval for Other Than Full and Open Competition in accordance with HSAM 3006.304-70 and find it legally sufficient.

\_\_\_\_*reviewed*\_\_\_\_\_  
Legal Counsel

\_\_\_\_5/14/2019\_\_\_\_\_  
Date

APPROVAL:

\_\_\_\_\_  
Contracting Officer

\_\_\_\_05/21/2019\_\_\_\_\_  
Date

\_\_\_\_\_  
Procuring Activity Advocate for Competition

\_\_\_\_05/21/2019\_\_\_\_\_  
Date